

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Susan Dean - 797-1042

PREPARED BY: Susan Dean

SUBJECT: Resolution

AFFECTED DISTRICT: Townwide

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AMENDING AGREEMENT 2000-292, ENTITLED "AGREEMENT BETWEEN THE TOWN OF DAVIE AND A-PLUS TRANSPORTATION FOR THE MAINTENANCE AND OPERATION OF THE TRANSIT BUS SERVICE" BY AMENDING ARTICLE 13 ENTITLED "TERMINATION" AND BY ADDING ARTICLE 16 ENTITLED "FINES"; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The Town wishes to extend the original agreement with A-Plus Transportation for the operation and maintenance of the community buses for a period of one year, in accordance with Article Four of said Agreement. However, after careful review, the Town would like to place two additional safeguards into the contract for the betterment of the Town. The first change would amend the Agreement to allow the Town to terminate the Contract after one written failure by the Contractor to provide service for any period of twelve (12) consecutive hours, or a total of twenty-four (24) hours, over a one-month period. The second change adds a schedule of fines as a consequence of the Contractor's failure to conform to any customer service requirements as outlined in the Agreement. The list of fines is outlined in the Amendment.

PREVIOUS ACTIONS: Contract dated January 3, 2001

CONCURRENCES: None

FISCAL IMPACT: N/A

RECOMMENDATION(S): Motion to Approve

Attachment(s): Amendment
Agreement with A-Plus

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AMENDING AGREEMENT 2000-292, ENTITLED "AGREEMENT BETWEEN THE TOWN OF DAVIE AND A-PLUS TRANSPORTATION FOR THE MAINTENANCE AND OPERATION OF THE TRANSIT BUS SERVICE" BY AMENDING ARTICLE 13 ENTITLED "TERMINATION" AND BY ADDING ARTICLE 16 ENTITLED "FINES"; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie and A-Plus Transportation, Inc previously entered into an Agreement dated January 3, 2001 for the operation and maintenance of the community transit buses; and

WHEREAS, the Town of Davie wishes to extend the term of the Agreement for one year in accordance with Article 4 of the existing Agreement and

WHEREAS, the Town Council finds that it is the best interest of the Town of Davie to amend Article 13 of the existing Agreement by adding 13.6 to provide grounds for immediate termination; and

WHEREAS, the Town Council finds that it is the best interest of the Town of Davie to add Article 16 entitled "Fines" to provide a fee schedule for failure to conform to customer service requirements as outlined in the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie hereby amends the Agreement between the Town of Davie and A-Plus Transportation, Inc. for the operation and maintenance of the community transit buses.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003

**AMENDMENT TO AGREEMENT
BETWEEN A-PLUS TRANSPORTATION, INC.
AND TOWN OF DAVIE FOR**

OPERATION AND MAINTENANCE OF TRANSIT BUS SERVICE

THIS AMENDMENT to that one certain Agreement Between A-Plus Transportation, Inc. and Town of Davie for Operation and Maintenance of Transit Bus Service is entered into this _____ day of _____, 2003 between A-Plus Transportation, Inc., a Florida corporation, hereinafter "Contractor", and the Town of Davie, a Municipal corporation of the State of Florida, hereinafter referred to as the "Town".

WHEREAS, the "Contractor" and the "Town" previously entered into that one certain Agreement dated the 3rd day of January, 2001, wherein the initial term of said Agreement was to expire on September 30, 2003, at 7:45 p.m., for the operation and maintenance of a transit bus service; and

WHEREAS the "Contractor" and the "Town" wish to exercise their respective rights under the Article 4 of the Agreement dated January 3, 2001, and wish to mutually extend the term of the existing contract for an additional one (1) year period with the following additions and amendments to the Agreement:

- 1 Article 13 of the Agreement dated January 3, 2001 entitled "Termination" is hereby amended to read:

13.6 Contractor shall receive one written warning for failure to provide bus service for any period of twelve (12) consecutive hours. A second failure to provide bus service for a period of twelve consecutive hours, or, a total of twenty-four hours over a one month period, shall constitute grounds for immediate termination.

- 2 Article 16 is to be added to the existing contract to read as follows:

**"ARTICLE 16
FINES"**

The Schedule of fines the Town will assess against the Contractor as a consequence of the Contractor's failure to conform to the customer service requirements as outlined in the Agreement are as follows:

- a. Failure to provide backup service within thirty (30) minutes in the event that one or more vehicles are out of service as set forth in Section 8.2 shall result in a fine of \$30.00 per hour per affected bus.*
- b. Failure to provide heat or air conditioning as required by Section 8.3.1.4 shall result in a fine of \$30.00 per hour per affected bus.*
- c. Failure to maintain vehicles in accordance with Section 8.3.2.2 shall result in a fine of \$15.00 per hour per affected bus.*
- d. Failure to maintain transit schedule within a 15 minute radius, excluding acts of weather, road construction/closing, or driver illness shall result in a fine of \$6.00 per hour per affected bus.*
- e. Failure to notify the Town regarding any changes in schedule shall result in a fine of \$6.00 per hour per affected bus.*

*All fines shall be prorated for any portion less than one (1) hour.

3. Except as set forth above, all other provisions of that one certain Agreement entered into by the "Contractor" and "Town" on the 3rd day of January, 2001 shall remain in full force and effect as if set forth more fully herein.

IN WITNESS WHEREOF, the parties have made and executed this Amendment to Agreement as of the date set forth on the first page of this Amendment.

TOWN

TOWN OF DAVIE

Attest:

By: _____

Mayor

____ day of _____,

2003
Town Clerk

APPROVED AS TO FORM:

BY: _____

Town Attorney

CONTRACTOR

A-PLUS TRANSPORTATION,

Inc.

BY:

Witness

Print Name: _____
Title:

AGREEMENT

BETWEEN A-PLUS TRANSPORTATION, INC.

AND TOWN OF DAVIE

FOR OPERATION AND MAINTENANCE OF TRANSIT BUS SERVICE

THIS AGREEMENT dated the 3rd day of January, 2001, and is between A-Plus Transportation, Inc., a Florida corporation, hereinafter "Contractor" and the Town of Davie, a municipal corporation of the state of Florida, hereinafter referred to as "Town."

WHEREAS, Town desires to provide a community transportation service to allow residents access to a number of destinations through public transit: and

WHEREAS, Town has determined that it would be in the public interest to provide said transit services by contracting with a private transit service provider to operate said transportation service: and

WHEREAS, Town has selected Contractor for the operation and maintenance of the transit bus system which shall be known as the "Eastern Davie Transit Route."

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, Town and Contractor agree as follows:

ARTICLE 1 **DEFINITIONS**

- 1.1 "Agreement" means this Agreement as it may be modified from time to time.
- 1.2 "Contractor" means A-Plus Transportation, Inc., a Florida corporation.
- 1.3 "County" means Broward County, a political subdivision of the state of Florida.
- 1.4 "Town" means the Town of Davie, a municipal corporation of the state of Florida.

ARTICLE 2 **CONTRACTOR'S SERVICES**

2.1 Contractor agrees to provide all services necessary to provide for the day to day management, operation and maintenance of the public transportation services for the "Eastern Davie Transit Route" according to the Agreement between County and Town, a copy of which is attached to this Agreement and incorporated by reference as Exhibit "A." Contractor shall

comply with every term, condition, duty and obligation set forth in Exhibit "A", including all attached exhibits to the Agreement.

2.2 Contractor shall provide free fare public transportation services (until such time as Town determines a fare to be appropriate), within the Town at the locations and according to the schedules set forth in Exhibit "A."

2.3 The established service shall be on a fixed route basis with designated intermediate stops a minimum of forty (40) hours per week and a minimum of five (5) days per week, provided however, the minimum hours of operation shall be reduced by eight (8) hours during any week in which a legal holiday is recognized by the Town on a weekday. The public transportation service shall connect with regular County bus routes, as set forth on Exhibit "A."

The initial schedule for the "Eastern Davie Transit Route" is approximately twelve (12) hours per each weekday and eight (8) hours on Saturdays. The hours of operation may be amended from time to time at the discretion of the Town and County to respond to the needs of the community.

2.4 Beginning June 1, 2001, Town and Contractor shall maintain a minimum average of five (5) passengers per revenue hour on each route operated by the Town and Contractor. In the event that Town and Contractor do not maintain such minimum average of passengers, County shall assist Town and Contractor to increase ridership which may include modification of the route, as set forth in Exhibit "A."

2.5 Vehicle(s) shall be operated by properly licensed operators ("vehicle chauffeurs") employed by Contractor. These employees shall provide full utilization of vehicle(s) to disabled passengers while in service.

2.6 Vehicle chauffeurs hired by Contractor shall issue County bus route timetables or other transit information to any passenger requesting such material.

2.7 Insofar as possible, scheduled service shall be coordinated with existing County bus service. It is the intent of the parties that Town's scheduled service shall not duplicate existing County bus service.

2.8 Contractor shall maintain the vehicle(s) provided by Town and County in accordance with manufacturer's standards and keep vehicle(s) in reasonable condition at all times.

2.9 Contractor shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) at all times while the vehicle(s) provided herein are being utilized for public transportation and while utilizing any and all routes approved herein. To the extent that any terms of this Agreement are inconsistent with the ADA, the requirements of the ADA shall control.

2.10 Contractor shall at all times during this Agreement comply with the requirements of Broward County Ordinance 92-8, pertaining to the maintenance of a Drug Free Work Place Program.

2.11 Contractor shall at all time during this Agreement comply with all applicable requirements of the United States Department of Transportation and the Federal Transit Administration, which shall include, but not be limited to, regulations for drug and alcohol testing. To the extent that any terms of this Agreement are inconsistent with the United States Department of Transportation regulations, the requirements of the United States Department of Transportation shall control.

2.12 Contractor agrees that throughout the term of this Agreement that the Broward County Transit (BCT) logo and the County assigned identification number shall be conspicuously displayed on the rear of the vehicle(s) at all times.

2.13 Contractor shall maintain certain records of information and data in the format prescribed by County and shall furnish such records to County, with a copy to Town, on a monthly basis.

2.14 Contractor shall, at all times, have and maintain in proper working order a dedicated TTY number.

ARTICLE 3 **TOWN'S SERVICES**

3.1 Town shall review all policies established by the Contractor relative to the public transportation services.

3.2 Town shall review the service planning, including adjustments to the routes, schedules and such other factors that affect the quality of service provided.

3.3 Town shall provide Contractor with bus route timetables prepared by Broward County Mass Transit Division sufficient to inform Town and County residents, visitors and passengers of service to be made available.

3.4 Town, in coordination with County, shall be responsible for designation of transit stops. It is understood that passengers will be able to board or depart from anywhere along the route as well as designated stops.

3.5 Town shall lease to Contractor two (2) wheelchair accessible, passenger vehicles, obtained from County, to be used in regular route service. Such vehicles shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations. The vehicles shall be leased to the Contractor for Ten Dollars (\$10.00) per year. Prior to acceptance of the vehicles by Contractor, Contractor, at its own cost, shall have the right to inspect, or cause to be inspected, the vehicles by a mechanic designated by the Contractor.

3.6 Town shall provide the manufacturer's warranties and maintenance shop manuals to the Contractor.

ARTICLE 4
TERM AND TIME OF PERFORMANCE

The term of this Agreement shall begin on January 16, 2001 and shall remain in effect until September 30, 2003. The Town is under no obligation to extend or renew this Agreement after its expiration. However, the term may be extended for up to two (2) additional one (1) year periods upon mutual written agreement.

ARTICLE 5
COMPENSATION

5.1 In return for services provided by Contractor and specified in this Agreement, the Town agrees to pay Contractor Twenty-eight Dollars (\$28.00) per hour, per vehicle in revenue service. The funds shall be used by Contractor solely for the purpose of maintaining, operating and properly equipping the vehicle(s) and for no other purpose. Town shall not be responsible for payment of any other monies to Contractor under this Agreement.

5.2 Compensation payable to Contractor for all services hereunder shall be adjusted upward or downward on October 1, 2001 and each year hereafter to reflect changes in the Consumer Price Index For All Wage Earners And Consumers for the Miami area.

5.3 Town shall hold the funds distributed by County to support the public transportation service and remit the applicable amount of such funds monthly to Contractor as they become due. Contractor shall submit invoices to the Town documenting hours of service provided by the Contractor during the preceding month together with such additional documentation which may be required by the Town (e.g., ridership statistics). Within thirty (30) days of receipt of such invoices, Town shall compensate Contractor pursuant to the terms set forth herein.

ARTICLE 6
PERFORMANCE STANDARDS

6.1 The public transportation service described in this Agreement must begin operations on January __, 2001, and such service shall run according to the schedule set forth in Exhibit A. The schedule shall be followed unless otherwise agreed upon in writing by the parties.

6.2 Contractor shall complete one hundred percent of all scheduled trips on a daily basis, subject to delays which are attributable to vehicular accidents or mechanical failure.

ARTICLE 7
PERSONNEL REQUIREMENTS

7.1 Contractor shall designate a Project Manager who will oversee the complete operation of the public transportation service and who will serve as the day to day liaison with the Town.

7.2 Vehicle chauffeurs employed by the Contractor during the term of this Agreement shall be properly licensed operators. The vehicle chauffeurs shall possess the qualifications as required by the State of Florida and the County. The vehicle chauffeurs shall be required to attend and successfully complete the County's training program prior to operating the vehicles. All drivers shall, during the term of this Agreement possess the following qualifications and adhere to the following standards. Contractor shall immediately dismiss any driver from performing services under this Agreement if driver fails to maintain said qualifications or standards as listed below:

7.2.1 Minimum age for drivers shall be 21 years.

7.2.2 Drivers must possess a valid Florida Chauffeur's license and attain a valid commercial driver's license as required by law.

7.2.3 Drivers shall have no more than three (3) moving violations or accidents (counted individually or combined) within a five (5) year period. Drivers shall have no history of a conviction for a DUI.

7.2.4 Drivers must be capable of speaking, writing and understanding the English language fluently.

7.2.5 Drivers shall operate the vehicle in a safe and timely manner.

7.2.6 Drivers shall be courteous to all passengers and the general public at all times and shall respond to passenger questions regarding the use of the subject service.

7.2.7 At all times while on duty, drivers shall wear clean and presentable uniforms which include a company shirt, appropriate length shorts, skirt or pants and closed toe shoes.

7.2.8 Drivers shall distribute or collect flyers, handouts, surveys, etc. as Town may request from time to time.

7.2.9 Drivers shall not accept gratuities.

7.2.10 Drivers shall assist passengers with disabilities with entering and exiting the vehicles.

7.2.11 Drivers shall not permit passengers to smoke or play a radio in the vehicles (unless the passenger is using headphones with the radio).

7.2.12 Drivers shall not be convicted of a crime during the term of this Agreement.

- 7.2.13 Drivers shall not test positive for drug use on a drug test administered by a responsible testing facility or in cooperation with the drug testing program at Broward County or the Town of Davie.

ARTICLE 8

CONDITION AND MAINTENANCE OF THE VEHICLES

8.1 Contractor shall maintain the vehicles in accordance with manufacturer's standards.

8.2 Contractor shall supply any additional vehicles to provide back-up service within thirty (30) minutes in the event that one or more vehicles are out of service. Contractor shall provide ADA accessible back-up vehicles should they be necessary to continue service as outlined in this contract.

8.3 Vehicles shall be maintained in good condition, both operationally and in their appearance, and in accordance with the County's requirements. All vehicles shall be kept in good repair and condition, satisfactory to the Town at a minimum to the standards listed below:

8.3.1 Equipping of vehicles:

8.3.1.1 All vehicles shall conform to the standards required by the Americans with Disabilities Act (ADA).

8.3.1.2 All vehicles shall be equipped with all appropriate safety equipment to be provided by Contractor.

8.3.1.3 All vehicles shall be equipped with two-way communications to be provided by Contractor.

8.3.1.4 All vehicles shall have heating and air conditioning systems that are fully operative every day the vehicle is in service. The air conditioning system shall be of sufficient size and capacity to provide a cooling effect throughout the vehicle, with cold air blowing in all sections of the vehicle.

8.3.2 Maintenance of Vehicles

8.3.2.1 The interiors of the vehicles shall be cleaned at least once each day and the exteriors of the vehicles shall be cleaned at least once per week. The vehicles shall be exterminated for pests at least once each week. Contractor shall have a continuing obligation to ensure cleanliness of the vehicles, and Contractor shall perform additional cleaning and extermination for pests as circumstances may warrant.

8.3.2.2 All vehicles and equipment on vehicles shall be maintained in fully operational condition at all times during the term of this Agreement. Contractor shall cause all components of each vehicle, including its, frame,

graphic wrap, furnishings, mechanical, electrical, hydraulic, or other operating systems to be maintained according to recommendations. Contractor shall cause any vehicle damaged in an accident or otherwise to be repaired to be immediately, including the graphic wraps. Contractor shall, at its sole cost and expense, provide fuel, lubricants, parts and supplies as required for the maintenance and operation of all vehicles.

8.3.2.3 All vehicles shall be safe for operation on public streets and highways and shall meet all requirements of the Florida Department of Transportation Rule Chapter 14-90, "Minimum Requirements for Transit Coaches and System Equipment." All parts of the vehicles and equipment mounted on or in the vehicle shall conform at a minimum to all applicable federal motor safety standards.

8.3.2.4 Contractor shall initiate and maintain an effective safety and mechanical inspection program.

8.3.2.5 All vehicles shall be available for inspection by the Town prior to Contractor placing them in service and at any time thereafter at the Town's discretion. Town has the sole discretion to reject temporarily or permanently any vehicle which Town deems unacceptable for reasons of safety, disrepair or appearance.

ARTICLE 9

RECORD KEEPING, REPORTING AND AUDITING

9.1 Contractor shall maintain such records and accounts including property, personnel, and financial records as are deemed necessary by Town to ensure a proper accounting record. The system of accounting will be in accordance with generally accepted accounting principles and practices. All project records prepared by Contractor shall be owned by Town and made available to Town at no charge. Town may elect to authorize representatives to inspect, audit, and analyze the records of Contractor relating to the subject service. Town shall have the right to audit the books, records and accounts of the Contractor. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the project or according to the scheduled reporting periods.

9.2 Contractor shall record on a daily basis and report weekly to the Town all disruptions in service, late service, vehicle breakdowns, accidents, vehicles out of service and any other incident affecting service.

9.3 Contractor's Project Manager shall also document passenger complaints and describe any actions taken to resolve such complaints on a weekly basis. Contractor agrees to submit copies of such documentation to Town on a weekly basis.

9.4 Contractor shall maintain daily records of total passenger utilization and total mileage logged on the vehicles by route while performing the services under this Agreement.

Project Manager shall provide accurate reports on ridership by route and by trip to Town on a monthly basis.

9.5 Town shall approve Contractor's forms that may be required in addition to those required by the County.

9.6 In the event funds paid to Contractor pursuant to this Agreement are subsequently disallowed by Town because of accounting errors or charges not in conformity with this Agreement, Contractor shall refund promptly to the Town such disallowed funds or such disallowed funds will be withheld from subsequent payment by Town to Contractor. No payment will be withheld or disallowed until Town has given Contractor written notice of the reason therefore and ten (10) days to correct, cure or otherwise reasonably satisfy Town. No more than the disputed amount will be withheld. Both Town and Contractor shall diligently pursue the resolution of any dispute regarding the accounting or charges referred to in this paragraph.

9.7 Contractor shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to the Agreement for a period of five (5) years after termination of this Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings.

ARTICLE 10

PRE-SERVICE REQUIREMENTS

The following items shall be delivered to the Town by Contractor at least two (2) days prior to the start of service and are subject to approval by the Town:

10.1 An operations manual for the subject services which describes all operations procedures and policies, including but not limited to the following:

- (A) Vehicle operating procedures;
- (B) Communications operating procedures;
- (C) Driver conduct rules and regulations;
- (D) Safety procedures;
- (E) Accident procedures;
- (F) Administration and reporting procedures; and
- (G) Other operating procedures and policies as required for proper operation of the subject service.

10.2 Job descriptions for drivers and administrative personnel.

10.3 Maintenance procedures for all vehicles.

10.4 Final system schedules.

10.5 Training procedures for drivers.

ARTICLE 11 INSURANCE

Contractor will comply with insurance requirements as set forth below:

- 11.1 Proof of insurance must be provided for Workers' Compensation, Commercial General Liability, Business Auto Liability, and Professional Liability. the Contractor shall carry in for at all times the insurance coverage and the Town and Broward County will be included as "Additional Insureds". Insurance requirements are as follows:
- A. Workers' Compensation- statutory
Policy must include Employers Liability: \$100,000 for each accident, \$500,000 disease (policy limit), and \$100,000 disease (each employee).
 - B. Commercial General Liability: \$1,000,000 per occurrence
Combined Single Limit for bodily injury and property damage. Policy shall include coverage for premises / operations; contractual liability; and independent contractors.
 - C. Business Auto Liability: \$1,000,000 per occurrence Combined Single Limit for bodily injury and property damage. Policy shall include coverage for owned autos; hired autos; and non-owned autos.
 - D. Professional Liability Insurance: Policy shall provide a minimum limit of liability of \$1,000,000 per occurrence.
- 11.2 Original certificates of insurance required herein shall be delivered to Town and County prior to the commencement of Contractor's performance. Contractor shall pay the premiums for all insurance required by this Agreement. Contractor shall cause all policies of insurance required by this Agreement to be renewed from time to time so that at all times the insurance protection required by this Agreement shall continuously exist. The policy shall not be canceled or materially changed without the giving of at least thirty (30) days prior written notice to Town and County, and in such event, a policy pursuant to the above terms must be substituted.

ARTICLE 12 INDEMNIFICATION

12.1 As to Town: Contractor agrees to indemnify, reimburse, defend and hold harmless the Town and, at Town's option, defend or pay for an attorney selected by the Town to defend the Town and Town's officers, agents and employees for, from and against all claims, actions or causes of actions, losses, damages, liabilities, costs and expenses, including reasonable costs, attorneys' and paralegals' fees, imposed on or incurred by the Town in connection with any and all loss of life, bodily injury, personal injury and damage to property

which arises or relates, directly or indirectly, to the Contractor's use of any vehicle provided for in this Agreement and the Contractor's performance of the services set forth in this Agreement. To the extent considered necessary by the Town, any sums due Town under this Agreement may be retained by Town until all of Town's claims for indemnification, pursuant to this Agreement, have been settled or otherwise resolved and any amount withheld shall not be subject to payment of interest by Town.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by the Town. Nothing in this Agreement shall be construed as consent by the Town to be sued by third parties in any matter arising out of this Agreement or any other contract.

12.2 As to County: Contractor agrees to indemnify and hold harmless the County and County's officers, agents, and employees as prescribed in Exhibit "A".

ARTICLE 13

TERMINATION

13.1 This Agreement may be terminated for cause by action of Town upon thirty (30) days' written notice by the party that elected to terminate, or for convenience by action of Town Council upon not less than sixty (60) days' written notice. This Agreement may also be terminated by Town upon such notice as Town deems appropriate under the circumstances in the event the Town determines that termination is necessary to protect the public health, safety, or welfare.

13.2 Termination of this Agreement for cause shall include, but not be limited to , failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of Town as set forth in this Agreement, or breach of any of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.

13.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by Town deemed necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

13.4 In the event this Agreement is terminated for convenience, the financial assistance provided by the Town shall be prorated on a daily basis to the date the Agreement is terminated. However, upon being notified of Town's election to terminate, Contractor acknowledges and agrees that \$10.00 compensation paid by Town, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for Town's right to terminate this Agreement for cause or convenience.

13.5 Upon termination of this Agreement for whatever reason, Contractor shall return the vehicle(s) leased herein to the Town. Contractor shall return the vehicle(s) to Town in the condition they were received at the onset of this Agreement, normal wear and tear excepted. The Contractor's obligation to return the vehicle(s) to the Town in the condition they were received shall include the removal of any painting or wrapping of the vehicles for advertisement purposes. Any costs necessary to restore and /or prepare the vehicle(s) shall be

the sole responsibility of the Contractor. Town, shall have the right to inspect and to approve the condition of the vehicle(s) prior to acceptance and should the Town determine that the vehicle is not in the proper condition, Contractor shall at its sole cost and expense remedy any and all deficiencies identified by the Town.

ARTICLE 14 **NOTICES**

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this article. For the present the parties designate the following:

For Town of Davie:

Town Administrator
Town of Davie
6591 Orange Drive
Davie, Florida 33314

For Broward County:

(Courtesy copies of
notices)

Director of Mass Transit Division
Broward County Mass Transit Division
3201 West Copans Road
Pompano Beach, Florida 33069

For A-Plus Transportation, Inc.:

A-Plus Transportation, Inc.
Attention: Mr. Carl Myers
3419 West Broward Boulevard
Ft. Lauderdale, Florida 33312

ARTICLE 15 **MISCELLANEOUS**

15.1 **NONDISCRIMINATION:** Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. Contractor agrees to furnish Town with a copy of its Affirmative Action Policy or in the event that Contractor contracts with a third party for this service, such third party's Affirmative Action Policy shall be furnished to Town.

15.2 INDEPENDENT CONTRACTOR: Contractor is an independent contractor under this Agreement. Services provided by Contractor shall be subject to the supervision of Contractor, and such services shall not be provided by Contractor or its agents as officers, employees, or agents of the Town. The parties expressly acknowledge that it is not their intent to create any rights in any third person or entity under this Agreement.

15.3 ASSIGNMENT AND PERFORMANCE: Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and Contractor shall not subcontract any portion of the work required by this Agreement except as authorized herein.

Contractor represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in this Agreement and to provide and perform such services to Town's satisfaction.

Contractor shall perform its duties, obligation, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance shall be comparable to the best local and national standards.

15.4 WAIVER OF BREACH AND MATERIALITY: Failure by Town to enforce any provision or modification of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

Town and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

15.5 COMPLIANCE WITH LAWS: Contractor shall comply with all federal, state, and local laws, codes ordinances, rules and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

15.6 SEVERANCE: In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Town or Contractor elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

15.7 JOINT PREPARATION: Preparation of this Agreement has been a joint effort of Town and Contractor and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

15.8 PRIORITY OF PROVISIONS: If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 15 of this Agreement shall prevail and be given effect.

15.9 APPLICABLE LAW AND VENUE: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

15.10 AMENDMENTS: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Town and Contractor.

15.11 PRIOR AGREEMENTS: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms or conditions contained herein shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 15.10 above.

15.12 INCORPORATION BY REFERENCE: The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibit "A" is incorporated into and made a part of this Agreement. Pursuant to the provisions appearing in Exhibit "A", when any obligation or duty in that document is one which is related to the public transportation service, Contractor agrees to fully comply with each and every such obligation and duty for and on behalf of the Town.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the date set forth on the first page of this Agreement.

TOWN

Attest:

TOWN OF DAVIE

Town Clerk

BY _____
Mayor

____ day of January, 2001

APPROVED AS TO FORM:

BY _____
Town Attorney

CONTRACTOR

INC.

A-PLUS TRANSPORTATION,

Witness

BY _____

Print
Name: _____

Title: _____

* * * * *

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